

Spencer Coggs



State Senator

Senate Bill 263/Assembly Bill 395
Senator Spencer Coggs Testimony
October 6, 2009

Chairs Taylor and Hebl,

Thank you for holding this Joint hearing on Senate Bill 263 and Assembly Bill 395 regarding the eligibility standards for legal representation by the State Public Defender. The gravity of a joint hearing underscores the urgent need for action on this legislation.

The current eligibility standard for Public Defender representation is based on income, less reasonable and necessary living expenses as computed by the former Aid to Families with Dependent Children formula. If a defendant cannot afford an attorney, the court must determine whether they qualify for SPD counsel, or if outside counsel must be appointed at the expense of the county. Now, these standards have not been updated in over 20 years. Companion bills SB 263/AB 395 seek to change the eligibility standard for Public Defender representation. So, these bills mirror asset and income eligibility ceilings for the Wisconsin Works (W-2) program. After subtracting the value of your car and home (up to \$30,000) your assets cannot exceed \$2500. Then if your household income doesn't exceed 115% of the federal poverty level, you would qualify for legal representation through the Public Defender's office. Additionally, as a result of the reassignment of cases from county-paid court appointed lawyers to the SPD office, the bill authorizes 49.25 new positions state wide for the Public Defender.

Fiscally, this bill will lower the costs paid by counties for legal representation and is projected to save them nearly \$2 million per year. And given the bill's effective date of June 19, 2011, there will be no cost this biennium and is expected to cost \$3.8 million in Fiscal Year 2012, and \$4.1 million a year after that. This cost reflects the increased staffing costs to represent an estimated increase of 12,800 cases. An amendment identical to this legislation was added by the Joint Committee on Finance to the 2009-11 Budget but was ultimately vetoed.

But Chairs and Members, the facts and fiscal sense of this bill speak for themselves. You will hear from several court officials regarding the technical aspects and practical applications of this proposal. The reason we introduced this legislation is one of constitutional fairness. The United States Constitution guarantees everyone the right to counsel. As Co-Chairman of the Governor's Commission on Reducing Racial Disparities in Wisconsin's Criminal Justice System, I heard expert testimony that the current eligibility rates for public defender representation result in no one but the most recent and

least experienced attorneys accepting appointments as counsel. Our recommendation from the Commission, which was presented to the Governor, was to revise the eligibility standards in a manner similar to the provisions that are contained in SB 263/AB 395. Our Commission also recommended the creation of a permanent body to continue working on racial disparities. Thus, the Racial Disparities Oversight Commission, chaired by Madison Police Chief Noble Wray, endorsed this legislation in August stating that they "urge the Legislature and the Governor to enact these long overdue revisions."

I believe that this bill will reduce the financial burden on counties and increase the standards of legal representation for indigent defendants and will be able to do so in a fiscally responsible manner for the state. I urge your two committees to support Senate Bill 263 and Assembly Bill 395.



RACIAL DISPARITIES OVERSIGHT COMMISSION

JIM DOYLE, GOVERNOR

CHIEF NOBLE WRAY, CHAIR

RESOLUTION OF THE GOVERNOR'S RACIAL DISPARITY OVERSIGHT COMMISSION

WHEREAS; Governor Doyle's Commission to Reduce Racial Disparity (CRRD) issued a Final Report in February 2008 finding that people of color receive disparate treatment in the Wisconsin criminal justice system and that African-Americans and Hispanics constitute a disproportionately high percentage of the incarcerated population in Wisconsin.

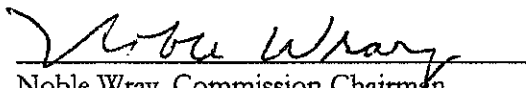
WHEREAS; the CRRD report included recommendations for the entire criminal justice system designed to rectify the inequities of racial disparity and disproportionate minority confinement.

WHEREAS; the CRRD report recommended that "[e]ligibility standards for qualification for Public Defender services should be revised" because they have not been addressed since 1987, because they prevent minorities who are unable to retain legal counsel from qualifying for appointed counsel through the Office of the State Public Defender, and because legal representation is essential to any effort to address racial disparity and disproportionate minority confinement in the criminal justice system.

WHEREAS; in May 2008, Governor Doyle created the Racial Disparities Oversight Commission to ensure that the recommendations from the CRRD's report are implemented and to "exercise oversight and advocacy concerning programs and policies to reduce disparate treatment of people of color across the spectrum of the criminal justice system..."

NOW THEREFORE; we support the pending legislation to update the Public Defender financial eligibility standards, 2009 SB 263 and any companion legislation expected to be offered in the assembly, and urge the Legislature and the Governor to enact these long overdue revisions.

DATED at Madison, WI this 19th day of August, 2009.


Noble Wray, Commission Chairman



Wisconsin Clerks of Circuit Court Association

Serving Wisconsin Courts

Senator Lena Taylor, Chair, Co. on Judiciary,
Corrections, Campaign Finance Reform and Housing
Representative Gary Hebl, Chair, Committee on
Judiciary and Ethics
North Hearing Room, (2nd Floor)
State Capitol, Madison, WI 53707

Re: Public Hearing – October 6, 2009

The Wisconsin Clerks of Circuit Court Association (WCCCA) appreciates this opportunity to appear and give testimony on the issue of the pending legislation, Senate Bill 263 & Assembly Bill 395.

Our organization supports passage of the proposed legislation, as it will result in substantial savings of taxpayer dollars statewide, as well as ensure the equal protection under the law that is guaranteed to all our citizens under the Constitution.

The cost of representation for indigent defendants has shifted to the counties over time. This has happened because the State Public Defenders' (SPD) office has been forced to use anachronistic indigency standards. These standards have not been updated since 1987. As a result, our circuit courts have had to spend nearly \$6 million in court-appointed counsel costs in 2008. Moreover, there is little consistency between and within counties as to what standards to use when determining which defendants are eligible to receive court-appointed counsel.

The SPD has an established infrastructure to handle these cases; thus, they are able to function in a far more cost-efficient and consistent manner than the Counties. The SPD is statutorily authorized to pay private bar attorneys at a rate of \$40/hour, while the counties cannot appoint at an hourly rate less than \$70 per hour. This is an issue not only in adult criminal cases, but also in CHIPS cases (Children in Need of Protection and Services). Prior to 1996, the SPD handled these cases; now the counties have had to take on this responsibility and its related costs. These costs have consistently and significantly increased over time.

It is for these reasons, we urge the Legislature to update the state indigency guideline and fully fund the State Public Defender's office. We would further recommend that the Legislature consider modifying state statutes to again allow SPD to provide representation in CHIPS cases.

Thank you for your consideration.

C: Committee Members

Senator Jim Sullivan, Senator Jon Erpenbach, Senator Glenn Grothman, Senator Randy Hopper
Rep. Pedro Colon, Rep. Frederick Kessler, Rep. David Cullen, Rep. Jon Richards, Rep. Robert Turner,
Rep. Mark Gundrum, Rep. Samantha Kerkman, Rep. Bill Kramer, Rep. Rich Zipperer




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MEMORANDUM

TO: Honorable Members of the Senate Committee on Judiciary, Corrections,
Insurance, Campaign Finance Reform, and Housing

Honorable Members of the Assembly Committee on Judiciary and Ethics

FROM: Sarah Diedrick-Kasdorf, Senior Legislative Associate 

DATE: October 6, 2009

SUBJECT: Support for Senate Bill 263 and Assembly Bill 395

The Wisconsin Counties Association (WCA) supports Senate Bill 321 and Assembly Bill 395, which change the criteria for determining indigency for the purposes of State Public Defender representation to parallel those of the Wisconsin Works (W-2) program.

WCA has a long-standing position to support updating our state's standards for determining public defender eligibility. Wisconsin's eligibility standards have not been updated since 1987. Each year, one of two scenarios occurs - county responsibility for funding legal representation for indigent defendants increases or an increased number of defendants attend court without legal counsel. Neither of these scenarios is acceptable.

In 1977, the state of Wisconsin created the Office of the State Public Defender (SPD) to provide legal representation for individuals who are unable to afford private counsel. There are numerous benefits to having a centralized system, including consistent eligibility guidelines, providing attorneys to indigent clients with expertise in the field of criminal defense, administrative and financial efficiencies.

Uniformly, counties across the state are frustrated with the current SPD eligibility standards, which are clearly outdated. Counties are required to pay for defense services for individuals who are truly indigent, but fail to qualify for SPD services due to standards that are increasingly difficult to meet. The burden of funding indigent defense services on the backs of county property taxpayers continues to grow every year. These costs vary year to year by county, making budgeting for indigent defense costs extremely difficult. In 2008, 69 of 72 counties reported spending approximately \$6,000,000 on court appointments at county expense. While counties support legal representation for individuals subject to legal proceedings in the criminal

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justice system, WCA strongly objects to county government bearing an increased percentage of the cost for this service when the State Public Defender's office was created for that very purpose. The SPD's office is better equipped to provide cost-effective legal defense services. Unless the SPD eligibility standards are changed to allow the SPD to represent individuals who are indigent by "real world" standards, counties will continue to fund increased indigent defense services at a cost to the taxpayer equivalent to twice the cost of representation by the State Public Defender's office.

The changes in the eligibility standards contained in Senate Bill 263 / Assembly Bill 395 ensure that Wisconsin citizens' constitutional rights are protected at a cost most economical/affordable to the taxpayers of this state.

WCA respectfully requests your support for Senate Bill 263 / Assembly Bill 395.



AFT-Wisconsin
A Union of Professionals

AFT • AFL-CIO

October 6, 2009

TO: Members of the Assembly Committee on Judiciary and Ethics and the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing

FROM: Scott Spector, Government Relations Representative, AFT-Wisconsin

RE: SB 263

The American Federation of Teachers-Wisconsin strongly supports SB 263. This legislation modernizes the income eligibility standards used to determine if a person is eligible for a state public defender. The current criteria are outdated and serve an injustice to those needing representation in our legal system. This bipartisan legislation would also save taxpayer dollars.

The current standards used to determine indigency are obsolete. Current standards are based upon the Aid to Families with Dependent Children program and have not been updated in more than 30 years. Because of this, some individuals who are working for the minimum wage are not eligible for a state public defender. For example, **single people making \$62 a week are too "rich" to be represented by a public defender in misdemeanor cases.**

The current proposal seeks to align indigency standards with W-2. W-2 takes into account an individual's assets and income. The bill specifies that to qualify for a public defender, a single person could make no more than \$978 a month and a family of three could have an income of no more than \$2,647 per month. W-2 is a more accurate assessment of indigency and will allow those in need to qualify for a public defender.

SB 263 also reduces the financial burden on counties. Because the indigency standard is so low, many counties are forced to pay the legal fees for those who otherwise could not afford legal counsel. **In 2006, 70 counties reported spending \$4.7 million to appoint attorneys for those who could not pay for their own representation.** The current system amounts to an unfunded mandate, where counties are forced to use dwindling budget dollars on a cost that is intended to be borne by the state. This legislation would reduce county spending by increasing the caseload of the state public defender office.

AFT-Wisconsin strongly urges you to support this common sense legislation. Please feel free to contact me with any questions or concerns.

Scott Spector
Government Relations Representative
AFT-Wisconsin
608-662-1444 ext 229



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**J.B. VAN HOLLEN
ATTORNEY GENERAL**

**Raymond P. Taffora
Deputy Attorney General**

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**PREPARED TESTIMONY OF ATTORNEY GENERAL J.B. VAN HOLLEN
BEFORE A JOINT COMMITTEE HEARING OF THE ASSEMBLY
COMMITTEE ON JUDICIARY AND ETHICS AND THE SENATE
COMMITTEE ON JUDICIARY, CORRECTIONS, INSURANCE,
CAMPAIGN FINANCE REFORM AND HOUSING**

Tuesday, October 6, 2009
North Hearing Room
Wisconsin State Capitol
11:00 a.m.

Thank you Madame Chair Taylor, Chairman Hebl, and members of the Senate and Assembly Committees on the Judiciary.

I appreciate the opportunity to appear before you today in favor of Assembly Bill 395 and Senate Bill 263. For many years, I have stated that the understaffing of Assistant Public Defenders and the high level of the indigency standards were a public safety and financial detriment to the people of Wisconsin. In addition, during my County Law Enforcement Roundtables, many of which you helped me host and participated in, the inefficiency, cost and other troubles with the current indigency standards were the topic of conversation in many counties.

There is no greater priority in our state than our public safety. Safe homes, communities, and neighborhoods are the places that make everything else possible, and without which, individual and social failure become more predictable. My views on the priority of public safety, law enforcement, and the criminal justice system are not new and are certainly well known to everyone here.

While public safety is the goal, the criminal justice system is the process by which we try to achieve that goal fairly.

Good law enforcement results in solved or prevented crimes and hopefully less victimization. It also results in arrests of accused individuals who are entitled to two fundamental things to secure fair justice: to be considered innocent until proven guilty; and, to have the benefit of defense counsel.

Unquestionably, public defenders play a key role in operating a fair criminal justice system that seeks justice for all. They usually play that role more efficiently and more competently than private bar appointments.

Put in simple terms, the right to counsel means that if a defendant cannot afford counsel, the defendant is provided counsel by the state. Wisconsin provides accused defendants with counsel through the State Public Defender – but only if the defendant meets current law's indigency requirements. But in cases where a defendant has a right to counsel yet does not meet these indigency requirements, the court must still appoint an attorney, paid for by the county in which the court sits. This appointed attorney usually receives a higher hourly rate and is less experienced in the practice of that type of law, often resulting in poorer representation and more hours spent on the case.

Thus, under current law, many defendants have a right to counsel but do not have a right to a public defender. And when this happens, it is the county treasury that pays the bill. The State Public Defender estimates it costs counties about \$6 million annually to appoint these lawyers – about \$2 million more than the estimated annual cost of this bill. By changing the indigency standards, fewer taxpayer dollars will be spent providing representation and one unfunded mandate on local governments will be removed.

While finding efficiencies in the criminal justice system is important, this bill's value goes beyond savings. The bill would also promote statewide uniformity and allow more defendants to access the quality representation that state public defenders provide. I speak as Attorney General and a former assistant public defender and prosecutor when I say that effective assistance of counsel not only helps secure the defendant's rights and protects the innocent, but it also helps the court and helps the state – both at trial and during the appellate process – secure appropriate convictions and seek and impose appropriate sentences.

This bill demonstrates that there is a growing appreciation in the policymaking community of conditions we've acknowledged for some time in the criminal justice community – adequately staffing and adequately funding the criminal justice system enhances the fairness of the criminal justice system and the reliability of outcomes. Today's bills are a step in the right direction. The next steps are providing adequate resources for our state prosecutors and our Public Defender. Fully staffing prosecutors' and Public Defender offices will also improve the performance of the criminal justice system in a way that will result in increased efficiency and fairness.

Thank you for the opportunity to testify today.

MEMORANDUM

To: Assembly Committee on Judiciary and Ethics
Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing

From: Atty. Douglas W. Kammer
State Bar of Wisconsin

Date: October 6, 2009

Re: State Bar of Wisconsin support for AB 395 and SB 263 (Indigence standards/State Public Defender)

The State Bar of Wisconsin supports Assembly Bill 395 and Senate Bill 263, which would increase the eligibility limits for a public defender from the antiquated 1987 AFDC limits to current W-2 limits, which generally are 115% percent of the federal poverty level. The State Bar has a long-standing position in favor of using federal poverty guidelines as minimum financial criteria for determining indigence and eligibility for constitutionally mandated appointment of counsel.

Outdated eligibility limits for a public defender are part of a mosaic of issues, all related to chronic under-funding of our justice system and lack of access to justice for those of limited means. While the need for this legislation is great, it is only one solution to one discreet part of a much broader problem. State Public Defender reimbursement rates for private bar appointments, which have been frozen at \$40 per hour since 1995, also need to be increased as proposed in AB 224, which received a hearing in June and is waiting for a vote in the Assembly Judiciary Committee. Forty dollars per hour is not sufficient to cover the overhead of the average law practice, and that fact makes it difficult to secure experienced attorneys to take these cases at such a low reimbursement rate. The State Bar of Wisconsin looks forward to working with the State Public Defender to increase the \$40 per hour reimbursement rate to a more reasonable level, as proposed by AB 224.

The State Bar supports the increased eligibility levels in AB 395 and SB 263 because it is the right thing to do. A free society cannot deny justice to the poor and remain free. However, I would be remiss not to acknowledge that this legislation carries an economic cost to our members. Under current law, if a court finds a defendant who does not qualify for a state-paid public defender to be indigent notwithstanding ineligibility for a public defender, the court can appoint counsel at county expense – known as a *Dean* appointment. This bill would limit, if not eliminate, the number of *Dean* appointments made at county expense, generally at reimbursement rates much higher than the \$40 per hour currently paid by the State Public Defender. The effect of this bill, then, would be to shift many of what are currently *Dean* appointments to SPD private bar appointments at a much lower reimbursement rate.

That being said, the State Bar's support for AB 395 and SB 263 is not contingent upon a future increase in State Public Defender reimbursement rates, but reimbursement rates are a severe

problem that the Governor and the Legislature need to address immediately. The members of the State Bar of Wisconsin have a long history of providing *pro bono* legal services to people of limited means, both in the form of free legal services and reduced-cost legal services, such as private bar SPD appointments. According to a 2008 survey, attorneys in Wisconsin annually contribute approximately \$12 million in free or reduced-cost legal services to the poor. This figure does not include the approximately \$23 million in reduced-cost legal services provided every year by State Bar members to the State of Wisconsin in the form of SPD private bar representation.

It is time for the State of Wisconsin to meet its obligation to make justice accessible to the poor by updating both SPD eligibility limits and private bar reimbursement rates.

Senate Bill 263 public hearing testimony of Larry Peterson, WSPDA

Good Morning. My name is Larry Peterson, and I am the current president of the WSPDA, the Wisconsin State Public Defender Association. I speak today in support of the bill.

Wisconsin's Public Defender is stunningly efficient at representing poor people. Our staff lawyers have saved counties from paying countless millions of dollars in legal retainers by providing legal services for indigent defendants. The Public Defender's method is tested, sound, and results in excellent representation at a very fair price for the State. That means individual taxpayers get the best possible value for the least possible tax expenditure. During a budget crisis, that is important.

Our successes as an agency depend on the ability of our staff, of course. Public Defender Staff Attorneys, the WSPDA's members, are the lawyers who make the Wisconsin State Public Defender the best criminal law firm in the State. Our attorneys are mature, responsible, experienced, and deeply influential officers of Wisconsin courts. We have all dedicated our careers to helping people during the worst times in their lives. Those qualities are what allow us to sort the innocent from the guilty. Those qualities allow us to help courts meter out punishment and mercy with wisdom. Our staff's lawyering brings just results faster, which is good for Defendants, victims, and the public.

You, as legislators, have us as a resource to help solve the challenges the state is facing. We are eager to help, and we are capable to help. Please, give us the call.

A practical example:

I live in Stoughton, but I work in Janesville, and every few weeks, it becomes my turn to appear with the newly arrested defendants at the jail as their cases begin. When they qualify for the Public Defender, I can immediately schedule a preliminary hearing, get a quick impression of the client's needs and viewpoint, maybe get an investigator out to look at the facts of the case, and be ready to resolve the case, or set it for trial, within 30 or 60 days.

When a defendant doesn't qualify, for example if he earns \$70/week, then we cannot schedule a preliminary hearing. Instead, we continue the case for him to find an attorney. When he comes back to court without one, since of course he can't afford a retainer, the public defender provides an application for the court, and another hearing in front of the judge is scheduled. The judge evaluates the application, and might or might not order an attorney at county expense. The case then goes back for scheduling a preliminary hearing. Meanwhile, jail costs mount, victims wait, and witnesses forget.

Expanding eligibility cures these problems. Passing this bill will make courts run better, and cheaper.



October 6, 2009

TO: Senator Lena Taylor, Chair
Members of the Senate Judiciary, Corrections & Housing Committee
Representative Gary Hebl, Chair
Members of the Assembly Judiciary & Ethics Committee

FR: Dave Krahn, Legislative Policy Advisor

RE: SB 263/AB 395 – State Public Defender Criteria for Determining Indigency

On behalf of Waukesha County, I ask you to please support SB 263/AB 395.

This legislation will overhaul the state public defender's indigency determination process, which has not been updated since 1987.

Because these standards are so outdated, there are individuals who fall through the cracks and end up on the county dime, which is to say their legal representation is paid for by the county property taxpayer. That is not where the bill should be sent.

In Waukesha County in 2009, our expenditure for court appointed attorneys for indigent individuals is estimated to be in excess of \$200,000.

This legislation would ensure that there is more cost-efficiency and program effectiveness if SPD provides representation, because that is what they do; it just makes sense to ensure that they have the where-with-all to do the job.

In addition, passage of this measure, would be a major step in the effort to have the state incrementally pick-up the cost of the state court system.

To summarize, SB 263/AB 395 would:

- Ensure a consistent eligibility standard is used throughout the entire state.
- Provide equal protection under the law for Wisconsin citizens.
- Avoid the potentiality of a lawsuit that the state would more than likely lose.
- Be more cost-effective

This initiative is long overdue. Please support passage of Senate Bill 263/Assembly Bill 395.

Thank you!

MEMORANDUM

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Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing

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Outdated eligibility limits for a public defender are part of a mosaic of issues, all related to chronic under-funding of our justice system and lack of access to justice for those of limited means. While the need for this legislation is great, it is only one solution to one discreet part of a much broader problem. State Public Defender reimbursement rates for private bar appointments, which have been frozen at \$40 per hour since 1995, also need to be increased as proposed in AB 224, which received a hearing in June and is waiting for a vote in the Assembly Judiciary Committee. Forty dollars per hour is not sufficient to cover the overhead of the average law practice, and that fact makes it difficult to secure experienced attorneys to take these cases at such a low reimbursement rate. The State Bar of Wisconsin looks forward to working with the State Public Defender to increase the \$40 per hour reimbursement rate to a more reasonable level, as proposed by AB 224.

The State Bar supports the increased eligibility levels in AB 395 and SB 263 because it is the right thing to do. A free society cannot deny justice to the poor and remain free. However, I would be remiss not to acknowledge that this legislation carries an economic cost to our members. Under current law, if a court finds a defendant who does not qualify for a state-paid public defender to be indigent notwithstanding ineligibility for a public defender, the court can appoint counsel at county expense – known as a *Dean* appointment. This bill would limit, if not eliminate, the number of *Dean* appointments made at county expense, generally at reimbursement rates much higher than the \$40 per hour currently paid by the State Public Defender. The effect of this bill, then, would be to shift many of what are currently *Dean* appointments to SPD private bar appointments at a much lower reimbursement rate.

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problem that the Governor and the Legislature need to address immediately. The members of the State Bar of Wisconsin have a long history of providing *pro bono* legal services to people of limited means, both in the form of free legal services and reduced-cost legal services, such as private bar SPD appointments. According to a 2008 survey, attorneys in Wisconsin annually contribute approximately \$12 million in free or reduced-cost legal services to the poor. This figure does not include the approximately \$23 million in reduced-cost legal services provided every year by State Bar members to the State of Wisconsin in the form of SPD private bar representation.

It is time for the State of Wisconsin to meet its obligation to make justice accessible to the poor by updating both SPD eligibility limits and private bar reimbursement rates.



Wisconsin State Public Defender

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Nicholas L. Chiarkas
State Public Defender

Kelli S. Thompson
Deputy State Public
Defender

Assembly Bill 395 & Senate Bill 263

Testimony by: Wisconsin State Public Defender Nicholas L. Chiarkas

October 6, 2009

Good morning. My name is Nick Chiarkas and I am the Wisconsin State Public Defender. First, thank you for this extremely important improvement in eligibility for public defender representation in Wisconsin. I am honored and encouraged to be here today to testify in support of Assembly Bill 395 & Senate Bill 263.

As you know, the State Public Defender's Office (SPD) provides constitutionally-mandated legal representation to the indigent who meet Wisconsin's statutory eligibility standards. The problem Wisconsin is currently facing is that these standards, set by statute, have not been updated since 1987, leaving many of our poorest citizens without access to legal representation in matters where their liberty is at stake. In addition, enacting this legislation would save Wisconsin taxpayers \$2 million dollars per year.

A Joint Finance Committee amendment to the 2009-11 biennial budget bill would have updated this financial criterion, but was vetoed. Similar legislation was previously introduced in the 2007 (SB 321, AB 576), 2005 (AB 1219), and 2003 (AB 616) sessions.

The Governor's Racial Disparities Oversight Commission recently stated that people of color receive disparate treatment in the criminal justice system and that African-Americans and Hispanics constitute a disproportionately high percentage of the incarcerated population in Wisconsin. The Commission also stated that Wisconsin's eligibility standards should be revised because they not only prevent many minorities who are unable to retain counsel from qualifying for appointed counsel through the SPD, legal representation is also essential to any effort to address racial disparity and disproportionate minority confinement in the criminal justice system. All of our citizens should have access to justice, no matter what color their skin, how poor they are or what zip code they live in.

If you will indulge me, I would like to give you two examples of people who would not qualify for public defender representation in Wisconsin but would in every other state.

1. If you are charged with a misdemeanor and you gross \$62.50 per week, (you are at 30% of the Federal Poverty Guidelines), and your only assets are \$300 in cash and a beat-up \$2000 car, you are not going to qualify for SPD representation in Wisconsin.

2. If you are charged with a felony, you have 2 children, you make \$7.25 per hour, and your only assets are \$300 in cash and a beat-up \$2000 car you are not going to qualify in Wisconsin for SPD representation.

Wisconsin's standards are the lowest in the country. They are an embarrassment to our state and need to be fixed.

I would also like to point out some problems with the current law. Many people who do not qualify for SPD representation are still too poor to afford a lawyer. In these cases, the courts must appoint a lawyer at county taxpayer expense. Consequently there is inconsistent application from court to court, and county to county. For example, a person may be provided a county-appointed attorney in one court, yet be denied an appointed attorney under the same circumstances in an adjoining courtroom or in another county.

Passage of this legislation would ensure consistency and equal access throughout all 72 Wisconsin counties. This legislation would provide equal protection for all our citizens, not just those who can afford a lawyer.

In addition, courts and counties have to divert taxpayer dollars and resources from other important services to create an appointment-of-counsel structure that already exists within the SPD. The reimbursement rate for county-appointed attorneys is, in many cases, almost twice the rate paid by the SPD (\$40/hour) to its appointed private attorneys. In CY 2008, 69 of the 72 counties reported spending approximately \$6 million of taxpayers dollars for county appointed lawyers. The actual amounts are increasing from year-to-year and may actually be higher as there is not a standard reporting system required for use by the county court systems.

Unlike the SPD, which implemented a statewide client collections program with consistent standards more than 10 years ago, judges have discretion to order defendants with court-appointed counsel to pay attorney fees; thus the offsetting revenue varies from court-to-court and from county-to-county.

I've long believed that those who have less in life should have more in law. Maybe that sounds a bit pie-in-the-sky naïve, but certainly you would agree that they should have an equal measure of law – as promised by the last three words of our Pledge of Allegiance – yet we know too well that they do not. As I have stated in previous testimony on this issue, justice, in the criminal sphere, is the law-breaker receiving what is due him or her, both in process and punishment. And it is the process, not the punishment, which distinguishes just governments. In the United States, we have agreed that before the government can take away our liberty, it must first provide us with a fair process. This process is not a gift—rather, it is owed to us...it is due us. That is the simple meaning of Due Process. What this process includes is what makes it complex. So complex, that whenever the government seeks to remove a citizen's liberty, the government is represented by an attorney (a prosecutor). Justice therefore dictates that throughout this complex process, the citizen facing the loss of liberty should also be represented by an attorney. Our pledge of allegiance promises in its last three words: "...justice for ALL." Consequently, citizens too poor to afford an attorney must be provided an attorney by the government.

SB 263 and AB 395 keep the promise of our pledge of allegiance...it is the ideal that is Wisconsin and the idea that is America. This proposed legislation (2009 SB 263 & AB 395) will update the financial eligibility standards to match those of Wisconsin Works (W2).

If enacted, this legislation will not only save taxpayer money but will ensure consistent eligibility standards and equal protection throughout Wisconsin.

With your help, we are hopeful this significant problem will be resolved. AB 395 and SB 263 will dramatically reduce county liability for providing counsel to indigent persons who do not presently qualify for SPD representation. The SPD will provide legal representation in

about 12,800 additional cases per year. The legislation will authorize 29.7 new attorney and 15.7 new support staff positions to handle approximately 75% of these cases, with the remaining 25% appointed to private attorneys.

With an effective date of July 1, 2011, no state costs will be incurred during the current 2009-2011 biennium. The annual cost in FY 2012 is projected to be \$3.8 million. The ongoing annual cost, beginning in FY 2013 is projected to be \$ 4.1 million. Based on the reported numbers from the counties in 2008, enacting this important legislation will therefore save taxpayers at least \$2 million per year.

On June 24, 2009, U. S. Attorney General Eric Holder addressed the American Council of Chief Defenders in Washington, D.C. He stated, "When I took the oath of office as Attorney General, I swore to support and defend the Constitution of the United States. Supporting and defending the Constitution includes, in my view, a responsibility to serve as guardians of the rights of all Americans, including the poor and underprivileged."

Denying SPD representation to those whose income is below the federal poverty guidelines is a disappointing departure from Attorney General Holder's commitment to justice for all, and cannot be reconciled with common and fundamental ideas of fairness. Moreover, it subjects Wisconsin's poorest citizens to increased dangers of conviction merely because of their poverty.

Today, in this room, you—Senators and Representatives—have given Wisconsin an opportunity to fulfill the promise of our Pledge of Allegiance and the promise of Gideon. This issue is not about public defenders, nor about policy or politics. It is about Wisconsin's poorest and most disenfranchised citizens reaching for justice. And Wisconsin's lawmakers bringing that promise of justice to every Wisconsin citizen, no matter how poor, no matter how powerless.

I am happy to answer any questions. Thank you very much for your consideration, leadership and support of this crucial legislation.



WISCONSIN CATHOLIC CONFERENCE

TESTIMONY IN SUPPORT OF SENATE BILL 263 AND ASSEMBLY BILL 395: ACCESS TO PUBLIC DEFENDER SERVICES

Presented by John Huebscher

October 6, 2009

The Wisconsin Catholic Conference thanks you for the opportunity to offer testimony in support of Senate Bill 263 and Assembly Bill 395, which would require the State Public Defender's (SPD) office to raise its eligibility standards and to hire additional staff.

The most significant action government can take is that of depriving a person of his or her freedom. This loss of freedom makes the stakes in any criminal proceeding of great importance to the accused. That is why fairness is critical to our system of criminal justice.

In our system, those accused of wrongdoing are presumed innocent and entitled to their day in court. However, for that day in court to be meaningful, the accused must have a genuine opportunity to prove their innocence. Adequate counsel, properly compensated, is vital to that opportunity.

That is why we support this legislation.

Some years ago, the Wisconsin Catholic Conference convened a 15-member Task Force on Corrections to review the state's criminal justice system.

The members of the Task Force included a former State Supreme Court Justice; the director of a community program that helps place offenders in jobs and housing; an assistant district attorney for Milwaukee County; an ex-offender; a prison chaplain; a retired county sheriff; a former probation officer; priests who minister to offenders and victims; and several crime victims.

The Task Force heard testimony from Department of Corrections officials; prison inmates; victims of crime; theologians; and advocates for judicial and prison reform. The bishops then wrote a statement, *Public Safety, the Common Good, and the Church: A Statement on Crime and Punishment in Wisconsin*, based on the findings of the Task Force. That statement advocated for several principles to guide public policies regarding crime and punishment.

One of these is that, "Criminal justice policies and pastoral responses to crime must take special care to address and serve those with little or no money. Policies must ensure that justice is as accessible to victims and offenders who are poor as it is to those who are more affluent."

- OVER -

Too often, justice is not currently accessible to poor people. One of the major reasons for this is a lack of access to effective legal counsel. This lack of access, in turn, is often due to the fact that the indigency standards have not changed since 1987. If the guidelines were to be made consistent with W-2, as these bills propose, it is estimated that the SPD could represent an additional 12,800 cases per year.

Senate Bill 263 and Assembly Bill 395 not only uphold our nation's civil commitment to equal justice under the law. In doing so, they also further the principle of Catholic social teaching that the measure of all institutions is the degree to which they either enhance or diminish the life and dignity of every human being, and the degree to which they protect or threaten the poorest and most vulnerable members of our society.

For these reasons we urge you to support SB 263 and AB 395.

Thank you.



Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS

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MADISON, WISCONSIN 53701-1688

Shirley S. Abrahamson
Chief Justice

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A. John Voelker
Director of State Courts

Testimony
of

A. John Voelker

Assembly Bill 395 and Senate Bill 263
Criteria for Determining Indigency by the State Public Defender

Assembly Committee on Judiciary and Ethics
Representative Gary Hebl, Chair

Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing
Senator Lena Taylor, Chair
October 6, 2009

Representative Hebl, Senator Taylor and members of the Committees, my name is John Voelker, the Director of State Courts. I appear today on behalf of the Legislative Committee of the Judicial Conference. The Committee supports Assembly Bill 395 and Senate Bill 263 that would update the eligibility standards used by the State Public Defender (SPD). This is the third time in the last six years I testified in support of this issue. The problems presented by outdated SPD indigency standards are not going away. In fact, they have worsened. Today I would like to address both the policy reasons and the financial implications that are behind this bill.

There is no doubt the current indigency standards, relying as they do on the 1987 Aid to Families with Dependent Children financial standards, are outdated. Basing the indigency standards on the Wisconsin Works (W-2) program makes far greater sense.

The judiciary has been aware for several years that the current indigency standards are inadequate. More and more defendants are clearly financially unable to afford their own attorneys. Nevertheless, they do not meet the requirements for representation by the (SPD). Circuit court judges are bound by constitutional principles to appoint counsel for indigent defendants, but under these circumstances the responsibility for paying appointed counsel falls to the counties. I would like to elaborate on the dilemma judges face.

The right of indigent defendants to counsel has been recognized in Wisconsin for nearly 145 years. In *Carpenter v. Dane County*, 9 Wis. 249 (1858), Wisconsin's supreme court reasoned that the right enumerated in article 1, section 7 of the Wisconsin Constitution – to be heard by counsel, to demand the nature and cause of the accusation, to meet witnesses face to face – would be meaningless without the right to legal counsel.

In *State v. Dean*, 163 Wis. 2d 503 (Ct. App. 1991), the Court of Appeals provided guidance to judges faced with the situation in which a defendant does not qualify for

representation by the SPD but who claims not to be able to afford counsel. The court said judges must consider all relevant evidence presented by the defendant that is material to the defendant's present ability to retain counsel and cannot be restricted to the statutory criteria for SPD representation. If a criminal defendant does not meet the public defender criteria, the trial court must nevertheless determine whether the defendant is indigent, and if he or she is, the trial court should appoint counsel from the private bar.

It is also clear the outdated indigency standards present a financial burden on the counties. As the standards have become more outdated, counties have picked up greater costs. I have attached to my testimony a table showing the indigent counsel costs that counties have reported to us for the calendar years 2007 and 2008.

Counties report this unaudited information to the Director of State Courts Office each May as required under s. 759.19 (5)(e), Wis. Stats. For calendar year 2007, counties reported, in total, spending \$6.29 million on indigent counsel, and for calendar year 2008, \$5.96 million. For comparison, in 2004 they report spending \$4.9 million. This information is unaudited, but we believe it provides an accurate reflection of what is happening in the counties.

When you combine a judge's duty to appoint with the fiscal pressures facing many counties, individual judges are often in a difficult situation.

Chief Justice Shirley Abrahamson noted, when she addressed the Joint Committee on Finance on March 17, 2009:

Our courts become backlogged when other justice partners, particularly the district attorney and public defender offices, lack resources. As I have visited courthouses across the state, I have learned first hand how critical properly staffed district attorney and public defender offices are for timely justice.

To that end, the court system supports properly staffed district attorney and public defender offices. Further, while indigent defense is a state executive, not judicial branch function, the efficient delivery of this constitutional right impacts the fairness and efficiency of the entire court system. Therefore, we support an update to the State Public Defender indigency guidelines which are more than 20 years old.

The Legislative Committee strongly favors the change in the indigency standards that are contained in AB 395 and Senate Bill 263. I would be happy to answer any questions. Thank you.

CY 2007 County Reported Attorney Expenditures for Indigent Counsel
(This information have not been audited or verified for accuracy by the Director of State Courts Office)

Calendar Year	County	Circuit Court Attorney - Indigent	Clerk Attorney - Indigent	RIP Attorney - Indigent	Family Crt Comm Attorney - Indigent	Family Crt Coun Attorney - Indigent	Cir Crt Comm Attorney - Indigent	Total Indigent Counsel Costs
2007	Adams	\$ -	\$ 31,130.00	\$ 14,076.00	\$ -	\$ -	\$ -	\$ 45,206.00
2007	Ashland	-	38,728.81	5,380.87	-	-	-	44,109.68
2007	Barron	-	26,478.00	-	-	-	-	26,478.00
2007	Bayfield	-	24,236.83	-	-	-	-	24,236.83
2007	Brown	286,230.00	-	424.00	-	-	-	286,654.00
2007	Buffalo	6,288.59	-	-	-	-	-	6,288.59
2007	Burnett	-	15,937.90	4,920.00	-	-	-	20,857.90
2007	Calumet	-	29,542.00	9,665.00	-	-	-	39,207.00
2007	Chippewa	-	53,761.17	-	-	-	-	53,761.17
2007	Clark	55,540.00	-	-	-	-	-	55,540.00
2007	Columbia	-	68,464.00	-	-	-	-	68,464.00
2007	Crawford	-	10,842.00	5,834.14	-	-	-	16,676.14
2007	Dane	-	138,989.00	-	-	-	-	138,989.00
2007	Dodge	76,927.00	-	-	-	-	-	76,927.00
2007	Door	4,319.00	53,750.00	-	-	-	-	58,069.00
2007	Douglas	-	34,008.00	-	-	-	-	34,008.00
2007	Dunn	20,072.63	-	-	-	-	-	20,072.63
2007	Eau Claire	155,382.00	-	-	-	-	-	155,382.00
2007	Florence	13,243.00	-	-	-	-	-	13,243.00
2007	Fond du Lac	-	164,895.16	24,057.00	-	-	-	188,952.16
2007	Forest	3,462.34	-	-	-	-	-	3,462.34
2007	Grant	-	50,855.69	-	-	-	-	50,855.69
2007	Green	11,129.20	-	-	-	-	-	11,129.20
2007	Green Lake	-	2,306.50	-	-	-	-	2,306.50
2007	Iowa	-	78,213.00	-	-	-	-	78,213.00
2007	Iron	9,624.46	-	-	-	-	-	9,624.46
2007	Jackson	23,593.00	-	-	-	-	-	23,593.00
2007	Jefferson	-	185,974.00	-	-	-	-	185,974.00
2007	Juneau	-	45,204.00	-	-	-	-	45,204.00
2007	Kenosha	-	-	-	-	-	-	-
2007	Kewaunee	-	18,140.00	-	-	-	-	18,140.00
2007	La Crosse	291,182.00	-	-	-	-	-	291,182.00
2007	Lafayette	31,104.11	-	-	-	-	-	31,104.11
2007	Langlade	10,386.00	-	3,767.00	-	-	-	14,153.00
2007	Lincoln	7,046.77	59,330.00	-	5,550.00	-	-	71,926.77
2007	Manitowoc	-	-	1,260.00	-	-	-	1,260.00
2007	Marathon	-	324,216.00	-	-	-	-	324,216.00
2007	Marinette	61,144.00	-	-	-	-	-	61,144.00
2007	Marquette	-	66,999.00	-	-	-	-	66,999.00
2007	Menominee	-	-	-	-	-	-	-
2007	Milwaukee	1,374,284.00	-	-	-	-	-	1,374,284.00
2007	Monroe	27,575.00	57,701.22	-	-	-	-	85,276.22
2007	Oconto	-	60,430.09	14,545.47	-	-	-	74,975.56
2007	Oneida	-	-	-	-	-	-	-
2007	Outagamie	187,723.00	-	-	-	-	-	187,723.00
2007	Ozaukee	-	52,263.00	-	-	-	-	52,263.00
2007	Pepin	-	-	-	-	-	-	-
2007	Pierce	-	7,593.00	-	-	-	-	7,593.00
2007	Polk	74,717.82	-	-	-	-	-	74,717.82
2007	Portage	-	82,144.00	-	-	-	-	82,144.00
2007	Price	-	-	-	-	-	-	-
2007	Racine	-	158,561.00	-	-	-	-	158,561.00
2007	Richland	-	14,462.74	-	-	-	-	14,462.74
2007	Rock	190,993.00	-	-	-	-	-	190,993.00
2007	Rusk	-	-	-	-	-	-	-
2007	Sauk	-	154,248.13	27,978.71	-	-	-	182,226.84
2007	Sawyer	14,561.00	-	-	-	-	-	14,561.00
2007	Shawano	-	1,534.64	-	-	-	-	1,534.64
2007	Sheboygan	-	130,976.42	-	-	-	-	130,976.42
2007	St. Croix	-	89,857.00	-	-	-	-	89,857.00
2007	Taylor	28,128.76	-	-	-	-	-	28,128.76
2007	Trempealeau	49,587.35	-	-	-	-	-	49,587.35
2007	Vernon	22,271.00	-	-	-	-	-	22,271.00
2007	Vilas	22,478.00	-	-	-	-	-	22,478.00
2007	Walworth	-	99,015.00	-	-	-	-	99,015.00
2007	Washburn	-	-	-	-	-	-	-
2007	Washington	-	203,723.88	-	-	-	-	203,723.88
2007	Waukesha	-	191,362.00	181,313.00	-	-	-	372,675.00
2007	Waupaca	-	-	-	-	-	-	-
2007	Waushara	-	41,364.00	-	-	-	-	41,364.00
2007	Winnebago	-	-	-	-	-	-	-
2007	Wood	66,348.19	-	-	-	-	-	66,348.19
		\$ 3,125,341.22	\$ 2,867,237.18	\$ 293,221.19	\$ 5,550.00	\$ -	\$ -	\$ 6,291,349.59

CY 2008 County Reported Attorney Expenditures under State v. Dean
(This information have not been audited or verified for accuracy by the Director of State Courts Office)

CY	County	District	ExpType	Name	Dean Exp
2008	Adams	6	County-Paid Counsel under State v. Dean		\$ 25,475.91
2008	Ashland	10	County-Paid Counsel under State v. Dean		31,994.95
2008	Barron	10	County-Paid Counsel under State v. Dean		32,132.71
2008	Bayfield	10	County-Paid Counsel under State v. Dean		31,363.12
2008	Brown	8	County-Paid Counsel under State v. Dean		268,023.00
2008	Buffalo	7	County-Paid Counsel under State v. Dean		10,016.50
2008	Burnett	10	County-Paid Counsel under State v. Dean		18,888.42
2008	Calumet	4	County-Paid Counsel under State v. Dean		44,904.00
2008	Chippewa	10	County-Paid Counsel under State v. Dean		29,457.96
2008	Clark	6	County-Paid Counsel under State v. Dean		101,365.49
2008	Columbia	6	County-Paid Counsel under State v. Dean		77,426.37
2008	Crawford	7	County-Paid Counsel under State v. Dean		16,784.97
2008	Dane	5	County-Paid Counsel under State v. Dean		372,083.00
2008	Dodge	6	County-Paid Counsel under State v. Dean		93,669.94
2008	Door	8	County-Paid Counsel under State v. Dean		62,248.00
2008	Douglas	10	County-Paid Counsel under State v. Dean		39,688.00
2008	Dunn	10	County-Paid Counsel under State v. Dean		34,145.07
2008	Eau Claire	10	County-Paid Counsel under State v. Dean		166,948.00
2008	Florence	9	County-Paid Counsel under State v. Dean		811.76
2008	Fond du Lac	4	County-Paid Counsel under State v. Dean		234,207.47
2008	Forest	9	County-Paid Counsel under State v. Dean		8,114.48
2008	Grant	7	County-Paid Counsel under State v. Dean		51,796.05
2008	Green	5	County-Paid Counsel under State v. Dean		55,133.06
2008	Green Lake	6	County-Paid Counsel under State v. Dean		12,325.00
2008	Iowa	7	County-Paid Counsel under State v. Dean		20,416.61
2008	Iron	9	County-Paid Counsel under State v. Dean		19,711.38
2008	Jackson	7	County-Paid Counsel under State v. Dean		52,154.00
2008	Jefferson	3	County-Paid Counsel under State v. Dean		78,982.48
2008	Juneau	6	County-Paid Counsel under State v. Dean		75,760.00
2008	Kenosha	2	County-Paid Counsel under State v. Dean		183,987.06
2008	Kewaunee	8	County-Paid Counsel under State v. Dean		39,362.02
2008	La Crosse	7	County-Paid Counsel under State v. Dean		391,174.21
2008	Lafayette	5	County-Paid Counsel under State v. Dean		-
2008	Langlade	9	County-Paid Counsel under State v. Dean		28,453.09
2008	Lincoln	9	County-Paid Counsel under State v. Dean		70,351.00
2008	Manitowoc	4	County-Paid Counsel under State v. Dean		5,495.00
2008	Marathon	9	County-Paid Counsel under State v. Dean		273,071.00
2008	Marinette	8	County-Paid Counsel under State v. Dean		49,713.00
2008	Marquette	6	County-Paid Counsel under State v. Dean		64,783.44
2008	Menominee	9	County-Paid Counsel under State v. Dean		84.25
2008	Milwaukee	1	County-Paid Counsel under State v. Dean		360,434.00
2008	Monroe	7	County-Paid Counsel under State v. Dean		91,629.93
2008	Oconto	8	County-Paid Counsel under State v. Dean		69,194.81
2008	Oneida	9	County-Paid Counsel under State v. Dean		58,626.00
2008	Outagamie	8	County-Paid Counsel under State v. Dean		181,490.23
2008	Ozaukee	3	County-Paid Counsel under State v. Dean		65,305.00
2008	Pepin	7	County-Paid Counsel under State v. Dean		5,106.00
2008	Pierce	7	County-Paid Counsel under State v. Dean		8,296.97
2008	Polk	10	County-Paid Counsel under State v. Dean		21,356.56
2008	Portage	6	County-Paid Counsel under State v. Dean		108,582.00
2008	Price	9	County-Paid Counsel under State v. Dean		-
2008	Racine	2	County-Paid Counsel under State v. Dean		166,625.00

2008	Richland	7	County-Paid Counsel under State v. Dean	7,313.27
2008	Rock	5	County-Paid Counsel under State v. Dean	-
2008	Rusk	10	County-Paid Counsel under State v. Dean	4,647.95
2008	Sauk	6	County-Paid Counsel under State v. Dean	209,426.15
2008	Sawyer	10	County-Paid Counsel under State v. Dean	22,928.26
2008	Shawano	9	County-Paid Counsel under State v. Dean	3,174.76
2008	Sheboygan	4	County-Paid Counsel under State v. Dean	141,497.18
2008	St. Croix	10	County-Paid Counsel under State v. Dean	95,253.49
2008	Taylor	9	County-Paid Counsel under State v. Dean	33,705.31
2008	Trempealeau	7	County-Paid Counsel under State v. Dean	64,987.00
2008	Vernon	7	County-Paid Counsel under State v. Dean	20,444.00
2008	Vilas	9	County-Paid Counsel under State v. Dean	20,195.98
2008	Walworth	2	County-Paid Counsel under State v. Dean	100,744.00
2008	Washburn	10	County-Paid Counsel under State v. Dean	42,539.00
2008	Washington	3	County-Paid Counsel under State v. Dean	183,938.13
2008	Waukesha	3	County-Paid Counsel under State v. Dean	224,515.00
2008	Waupaca	8	County-Paid Counsel under State v. Dean	76,522.16
2008	Waushara	6	County-Paid Counsel under State v. Dean	50,518.43
2008	Winnebago	4	County-Paid Counsel under State v. Dean	313,558.00
2008	Wood	6	County-Paid Counsel under State v. Dean	40,130.29

Total CY 2008 Attorney Costs under State v. Dean

\$ 5,965,186.63



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Testimony of Christopher Ahmuty,
Executive Director of the ACLU of Wisconsin
in support of AB395/SB263 relating to criteria for determining indigency for
purposes of representation by the State Public Defender.

Before the Assembly Committee on Judiciary and Ethics and
the Senate Committee on Judiciary, Corrections, Insurance,
Campaign Finance Reform and Housing
October 6, 2009

Good morning, I am Chris Ahmuty, the Executive Director of the American Civil Liberties Union of Wisconsin, a group of over 8,500 dues paying members who support the civil liberties and rights of all Wisconsin residents.

Thank you for the opportunity to testify today in support of AB395 and SB263, which if signed into law will make the financial eligibility criteria for representation by the State Public Defender much more reasonable. At the ACLU of Wisconsin we look upon these bills as perhaps the Legislature and Governor's last chance to begin necessary repairs to a system which casts criminal defendants' rights to a fair and just trial in doubt.

The ACLU by means of advocacy and litigation has supported the Sixth Amendment's guarantee of the right to counsel for many years, but our support has not been as long as the support for the right to counsel articulated by the Wisconsin Supreme Court. Justice Cole spoke for our state's highest court in 1859, when he wrote, "it would be a reproach upon the administration of justice, if a person, thus upon trial, could not have the assistance of legal counsel because he was too poor to secure it."¹

Over a century later, in 1962, the ACLU filed an amicus brief in Clarence Gideon's landmark case, in which the United States Supreme Court ruled that the Sixth Amendment guarantee requires states to provide counsel to those persons accused by the state of criminal wrongdoing and unable to afford private counsel.² The Court subsequently made clear that such persons are entitled to

¹ *Carpenter & Sprague v. Dane County*, 9 Wis. 274 (1859)

² *Gideon v. Wainwright*, 372 U.S. 335 (1963)

more than just a lawyer standing next to them at trial. Instead, states must ensure that they receive "effective assistance of competent counsel."³

Our amicus brief doesn't pull any punches. ACLU lawyers wrote "A criminal trial without a defense lawyer ... is a mockery and a sham, designed to obtain the speediest possible conviction for the State, whose full power is arrayed against the defendant."⁴

To the extent that Wisconsin's hodge-podge public defense system leaves poor defendants without competent counsel, much less without any counsel at all, it compromises our state criminal justice system's ability to produce just results, jeopardizes public confidence in that system, perpetuates racial disparities, endangers public safety, wastes taxpayer dollars, and ultimately diminishes Wisconsin and the United States in the international community.

The ACLU of Wisconsin has been hopeful that the Legislature and Governor would address deficiencies in our public defense system. We believe that the ABA's *Ten Principles of a Public Defense Delivery System* offers guidance concerning what needs to be done.⁵

I am still trying to understand exactly why Governor Doyle vetoed provisions of 2009 Assembly Bill 75 (the biennial budget) which would have increased the financial eligibility standard. In his June 29th veto message he expressed his commitment "to ensuring adequate representation of individuals with limited income." He added "I will continue to review this policy issue in future budgets."⁶

We acknowledge that Wisconsin and Wisconsin's counties face severe budget problems. However, it's not within the ACLU's mandate to solve those problems – we believe that constitutional rights are priceless. Furthermore, we believe that policy makers should not ignore the public's support for fundamental American values.

Public opinion polls show that voters support a criminal justice system that delivers fair results and that they are willing to commit the tax dollars necessary to accomplish this goal. A 2002 nation-wide public opinion poll showed that 64% of those polled supported the use of taxpayer dollars to provide indigent persons with lawyers. A majority supported reforms to ensure those accused of crime received competent counsel, including proposals that would provide public defenders and prosecutors with the same resources per case (88%); establish standards on qualifications for public defenders and court-appointed lawyers

³ *McMann v. Richardson*, 397 U.S. 759, 771 (1970) (emphasis added).

⁴ *Gideon v. Cochran*, 1962 WL 115121 (U.S.) Brief of the American Civil Liberties Union and the Florida Civil Liberties Union, Amici Curiae, p. 13.

⁵ American Bar Association, *Ten Principles of a Public Defense Delivery System*, approved by the ABA House of Delegates, February 2002 available at <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf> (last viewed on October 5, 2009).

⁶ Governor Jim Doyle, Veto Message to 2009 Assembly Bill 75, p. 9

(78%); and ensure that judges and local governments do not appoint attorneys based solely on who charges the least (50%).⁷

Since *Gideon* ACLU litigation regarding indigent defense has taken several approaches, including recent actions in these states:⁸

Montana: In 2005 in the wake of a class-action lawsuit filed by the ACLU, the Montana Legislature passed a bill creating for the first time a statewide public defender system in that state.

Ohio: In 2006 the ACLU of Ohio and others filed a petition calling for the Ohio Supreme Court to adopt a rule making it much more difficult for children charged with a crime to waive counsel. In some Ohio counties an estimated 90 percent of children charged with criminal wrongdoing were not represented by an attorney. In September 2007 the Supreme Court of Ohio in *In Re: Spears* affirmed that the appointment of counsel is mandatory in all cases where a juvenile does not have a parent or guardian available for advice, and allows juveniles to waive counsel only if the decision is made voluntarily, knowingly and intelligently.

Michigan: In June 2005 in a landmark decision, *Halbert v. Michigan*, the U.S. Supreme Court struck down a 1999 Michigan law that barred judges from appointing attorneys to help poor people who have pled guilty to appeal their sentences.

Michigan: In February 2007 the ACLU of Michigan and other members of the Michigan Coalition for Justice filed a lawsuit, *Duncan et al. v. Michigan & Granholm*, charging that the State of Michigan failed to fulfill its constitutional obligation to provide adequate counsel to criminal defendants who cannot afford private counsel. The Circuit Court granted class certification and dismissed the state's motion for summary judgment. The Court of Appeals affirmed. These matters are now before the Michigan Supreme Court.

The variety of these ACLU cases indicates that we will consider a variety of strategies should Wisconsin's public defense system fail to provide adequate representation for all types of poor criminal defendants in all of Wisconsin's counties throughout all stages of the judicial process. We may even use non-frivolous arguments not previously before our courts.

For instance, the United Nation's committee charged with overseeing compliance of signatory nations with the Convention on the Elimination of All Forms of Racial Discrimination (CERD) has repeatedly identified under-resourced and poorly

⁷ Belden, Russonello & Stewart, *Americans Consider Indigent Defense: Analysis of a National Study of Public Opinion*, Jan. 2002, available at <http://www.nlada.org/DMS/Documents/1075394127.32/Belden%20Russonello%20Polling%20short%20report.pdf> (last viewed on October 5, 2009).

⁸ An overview of ACLU's advocacy and litigation regarding indigent defense, as well as documents related to specific cases is available at <http://www.aclu.org/crimjustice/indigent/index.html>

managed indigent defense systems as a factor contributing to racial disparity in criminal justice systems.

In March 2008, the United Nation's CERD committee issued specific recommendations to address this problem:

The Committee recommends that the [United States] adopt all necessary measures to eliminate the disproportionate impact that persistent systemic inadequacies in criminal defence programmes [sic] for indigent persons have on defendants belonging to racial, ethnic and national minorities, inter alia, by increasing its efforts to improve the quality of legal representation provided to indigent defendants and ensuring that public legal aid systems are adequately funded and supervised.⁹

AB395 and SB263 will not remedy the all problems that plague public defense in Wisconsin. We need to know more about what is happening (or not happening) in each of Wisconsin's Circuit Courts. While changing the eligibility standard will allow the Office of the State Public Defender to represent many more clients, there will still be individuals dependent upon court-appointed counsel. Counties will save millions of dollars, should this legislation be signed into law, but they will still have some expense. Nevertheless, AB395 and SB263 represent a necessary step on the most promising road to reform.

Thank you for your consideration. On behalf of the ACLU's members in Wisconsin, I ask you to please support passage of the AB395/SB263.

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Prepared October 5, 2009

⁹ Committee on the Elimination of Racial Discrimination, February 18 – March 7 2008, 72nd Sess., *Concluding Observations of the Committee*, ¶ 22, U.N. Doc. CERD/C/USA/CO/6 (Mar. 7, 2008): http://www.aclu.org/pdfs/humanrights/cerd_concluding_report.pdf (last viewed on October 5, 2009).

And see Governor Jim Doyle's Commission on Reducing Racial Disparities in the Wisconsin Justice System, *Final Report*, February 2008, available at <http://oja.wi.gov/docview.asp?docid=13615&locid=97>, (last viewed October 5, 2009).

JUNEAU COUNTY DISTRICT ATTORNEY'S OFFICE

Juneau County Justice Center
200 Oak Street
Mauston, WI 53948
Phone (608)847-9314 / Fax (608)847-9320

District Attorney
SCOTT HAROLD SOUTHWORTH
Victim / Witness Coordinator
MICHELE MEHNE

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JOHN NEWTON
STACY A. SMITH

Testimony of District Attorney Scott Harold Southworth 2009 Senate Bill 263 / 2009 Assembly 395

Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing
Assembly Committee on Judiciary and Ethics

Chair Lena Taylor and Chair Tom Hebl:

Thank you for holding this joint hearing on SB 263 and AB 395, addressing the constitutional, moral and economic issue of legal representation of the indigent here in Wisconsin.

For many years, individuals couched public representation in terms of ideology or politics. People often viewed it as "liberal." I find this interesting, since the definition of a "conservative" (and I am one) is standing up against the heavy hand of government. As a District Attorney, I understand the power I hold, and can't think of anything more heavy-handed than accusing a person of a crime that could lead to imprisonment. That said, views have changed in Wisconsin for the better. Public representation is neither liberal, nor conservative. It's a moral responsibility for the public and a constitutional right of those accused. The issue is not whether we provide representation, but how.

We have two choices – establish reasonable economic guidelines for our State Public Defender to appoint counsel using GPR dollars, or appoint attorneys at the county level for more money using property tax dollars. For poor counties like Juneau, a better equipped SPD Office means less strain on property taxpayers.

However, legal representation is not simply an economic issue. State Public Defender Nick Chiarkas and his team continue to represent indigent individuals with competence and professionalism. Since SPD attorneys *specialize* in criminal defense, information-sharing between my office and our courts helps improve court efficiency.

There are four "legs" in the stool that represents our criminal justice system: the prosecutor, the defense attorney, the court and community resources. All have become strained over the past few decades as staff levels have not increased proportionately with increases in population and cases. Recently, the Legislature added new circuit courts around the state. SB 263 and AB 395 will strengthen our ability to provide public defense. I am hopeful that you will next address the shortfall in the number of prosecutors. Through each of these efforts, you help to ensure our criminal justice system continues to serve as a model of fairness and efficiency. Truly, the Office of the State Public Defender's motto of "Justice for all" should serve as the motto for us all. Thank you.

Applicant's Name

Social Security Number

Date of Birth

Applicant's Address

(Monthly NET amount x 6 for felony and x 4 for all other cases.)

INCOME AND ASSETS

1. a.
- ☐
- Applicant's & spouse's sole income (circle all that apply): W-2, SSI(E), TANF, Other

AUTOMATICALLY

- ☐
- Verified with notice of eligibility or other verification

ELIGIBLE

b. Applicant

- ☐
- Wage income Name & phone or address of employer: _____

# weeks left	Wkly GROSS	Wkly NET	x4 wks=	x 4/6=
<input type="checkbox"/> Unemploy. Comp.	# weeks left	Weekly \$	x4 wks x85%=	x 4/6=
<input type="checkbox"/> Other (self-employed, SSDI, SS, etc.)				x 4/6=
				x 4/6=

- ☐
- Unemployed Name & phone or address of last employer: _____

Date last employed: _____

- c. Marital status:
- ☐
- Single/Widowed
- ☐
- Married
- ☐
- Divorced
- ☐
- Divorce Filed

Spouse

x 4/6=

- d. If neither applicant nor spouse is employed (and neither receives other income):

How do you support yourself?

Name: _____

Phone: _____

2. Liquid assets of applicant and spouse

a. Cash

b. Checking/Savings Account/Trust Funds Bank? _____

* c. Stocks and Bonds Specify: _____

* d. Retirement Acct/Cash value of life insurance Explain: _____

e. Funds owed applicant/spouse Explain: _____

f. Bail posted by applicant/spouse on current offense Explain: _____

g. Other-Specify: _____

3. Non-liquid assets of applicant and spouse valued at 1/4 of equity

- Only include those assets valued at \$500 or more.

Value - Owed = Equity
on principal

1/4 of equity

(* FA review needed for vehicles valued over \$5000 and all real estate)

* a. House, other real estate

Lender? _____

* b. Car(s)-Yr/Make: _____

Lender? _____

* c. Other (truck, snowmobile, etc.) _____

d. Electronics/collections/other _____

TOTAL INCOME AND ASSETS

(Box 1)

EXPENSES-COST OF LIVING

(effective September 1, 1987)

Fam #	Felony	Other
1	\$1488	\$992
2	\$2640	\$1760
3	\$3102	\$2068
4	\$3702	\$2468
5	\$4248	\$2832

Fam #	Felony	Other
6	\$4596	\$3064
7	\$4974	\$3316
8	\$5274	\$3516
9	\$5520	\$3680
10	\$5658	\$3772

Cost of living amounts for:

blind, 65+ or disabled (e.g. SSDI, vet. disability)

(Effective 01/01/09)

	Monthly	Felony	Other
Single	\$758	\$4548	\$3032
Single & SSIE	\$854	\$5124	\$3416
Disabled couple	\$1143	\$6858	\$4572
Disabled couple w/ SSIE	\$1488	\$8928	\$5952

Name, age, SS# of dependents

TOTAL COST OF LIVING

(Box 2)

TOTAL INCOME AND ASSETS MINUS COST OF LIVING

(Box 1 minus Box 2 =)

TOTAL INCOME AND ASSETS MINUS COST OF LIVING

(From front of page.)

(Box 3)

2. Essential Expenses

If claiming over \$400/\$600 in total depending on case type, then ALL expenses must be verified (copies to be attached). Use only monthly payment amounts. If no monthly payment schedule has been established, establish one, not to exceed \$100/month. Most expenses require payment on debt before including as expense per 7.016 (P&P).

Do NOT include expenses that are deducted automatically from paycheck.

Monthly amount (x 4 or 6) =

TOTAL

Child Support - Names & ages:

Court-ordered obligations

Fines and forfeitures

Civil judgments

Ch 11, 13 payments

Child care (work-related only)

Health insurance

High-risk auto insurance

Huber

Tax arrearages

Medical/Dental bills

Social Services bills

Rent/mortgage arrearages

Student loans

Utility arrears-no phone or cable

TOTAL ESSENTIAL EXPENSES

(VERIFY if over \$400/\$600)

(Box 4)

AMOUNT AVAILABLE FOR COUNSEL

(Box 3 minus Box 4 =)

ELIGIBILITY DETERMINATION - COST OF COUNSEL TABLE

(Circle applicable case cost)

1st degree intent. homicide	\$7500	Other felony	\$1450	Misdemeanor	\$400
Other class A/B/C felony	\$2800	Paternity	\$700	Traffic misdemeanor	\$300
Sexual predator (s.980.02)	\$2800	Parole/probation revocation	\$400	Special Proceeding	\$300
TPR	\$2800				

Applicant is: ☐ ELIGIBLE ☐ NOT ELIGIBLE - Amount available for counsel is greater than cost of counsel.

PAYMENT

If you have the ability to pay, the state has a right to payment of your attorney fees.

You may eliminate your payment obligation by paying the nonrefundable prepayment amount within 60 days.

The SPD attorney fee for your case(s) is \$_____ and the prepayment amount is \$_____.

1st degree intent. homicide	\$7500/\$600	Other felony	\$480/\$60	Parole/probation revocation	\$240/\$60
Other class A/B/C felony	\$1200/\$120	Misdemeanor	\$240/\$60	Special Proceeding	\$120/\$30
Sexual predator (s.980.02)	\$1200/\$120	Paternity	\$240/\$60	TPR	\$480/\$60

☐ # of Prepayment envelope(s) given? (Note: 1 envelope per case)

I have not quit my job or sold or disposed of any assets for less than fair market value to qualify for public defender representation.

I certify that this financial statement is true to the best of my knowledge and belief. I will promptly inform the SPD or my appointed lawyer of any material change in my income or assets. I understand the SPD may contact other persons or organizations to obtain the necessary proof of my eligibility and I authorize the release of such information.

☐ Eligibility determination completed within last 90 days. There has been no material change in my income or assets since then.

If box is checked above, then Date of last Eligibility Determination: _____

Applicant's Signature _____

Date Signed _____

Eligibility Evaluator's Signature _____

Date Signed _____

- ☐ E-Form was done by phone
☐ Payment envelope(s) mailed?
☐ Verification checklist given?
☐ Applicant in custody

First Assistant or Designee Signature* _____

Date Signed _____

Date verification completed _____

*First Assistant or Designee will review, approve and sign off on each required E-Form.